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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Petition of the Arizona)
Corporation Commission)
to Extend State Authority)
Over Rate and Entry)
Regulation of All Commercial)
Mobile Radio Services)

94-104
PR File No.
94-SP2

OPPOSITION OF
MOHAVE CELLULAR LIMITED PARTNERSHIP

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Dated: September 19, 1994

SUMMARY

The Arizona Corporation Commission's ("ACC's") Petition misstates facts and ignores law. The Petition reads as if all CMRS in Arizona is regulated. In truth, however, all CMRS with the sole exception of wholesale cellular is not regulated. The Petition fails to acknowledge, much less to justify, the lack of regulatory symmetry in Arizona.

In discussing wholesale cellular, the Petition does not accurately describe market conditions or the ACC's regulation. Mohave Cellular Limited Partnership ("MCLP"), a Block B cellular carrier in rural Arizona, competes with 12 unregulated CMRS providers, a Block A carrier in the same RSA, and three cellular carriers in California and Nevada with extensions into the RSA. Because of this intense competition, MCLP's rates are well below the national average. In all of Arizona, with 11 years of ACC "regulation," no rate cases to increase rates have been filed; only one complaint has been filed, but it was not prosecuted. Market forces, not the ACC, have protected consumers from high cellular rates.

Finally, the Petition intentionally disregards the evidentiary showings required by the FCC for such petitions, calling them "unattainable hurdles" and "unreasonable standards and criteria." These complaints are too late and meritless. The Petition fails to present the necessary evidence of a lack of competition in the Arizona CMRS market that would justify

continued regulation of any kind. For all of these reasons, the
Petition should be denied.

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Mohave Cellular Limited Partnership, pursuant to Public Notice DA 94-8876, opposes the Petition filed by the ACC to "continue (the ACC's) rate and entry regulation over commercial mobile service providers within the State of Arizona." ACC Petition at 1. MCLP is the Block B cellular licensee in the Arizona 1-Mohave RSA.

I. INTRODUCTION

The ACC's Petition is fundamentally misleading. The Petition omits any description of the Arizona CMRS market. The Petition pretends that wholesale cellular is the only CMRS and ignores the unregulated CMRS in Arizona. The Petition fails to explain that Arizona lacks regulatory symmetry because wholesale cellular is the only type of CMRS regulated in Arizona.

Contrary to the implication of the Petition, the ACC does not regulate all providers of CMRS. Rather, the ACC deregulated mobile radio service and paging service, and refrained from regulating retail cellular service. The only CMRS regulated by

the ACC is wholesale cellular service. The Petition completely ignores this absence of regulatory symmetry in Arizona. In enacting the new section 332 of the Communications Act, Congress intended to "creat(e) regulatory symmetry among similar mobile services." Regulatory Treatment of Mobile Services (Second Report & Order), 9 FCC Rcd 1411, 1413 (1994). The Petition does not acknowledge, explain, or justify the lack of regulatory symmetry in Arizona.

The Petition also misdescribes the ACC's regulation of wholesale cellular. In 11 years of "regulation," the ACC has received one formal complaint against a cellular carrier, which was dismissed for lack of prosecution. There have not been any rate cases filed or adjudicated.

The Petition misstates other facts. For example, it claims that the ACC rejected deregulation of "CMRS." ACC Petition at 1-2. The only issue before the ACC was whether to deregulate wholesale cellular telephone service in Arizona's two MSA's (Phoenix and Tucson), the only areas with service at the time of the decision (1989). Id. at Attachment 1. The ACC staff, after analyzing the level of competition, recommended that wholesale cellular service be deregulated. Id. at Pg. 7. The ACC did not adopt this recommendation because it lacked authority under the Arizona state constitution to do so; because the cellular carriers "transmit messages to the public," they had to be regulated. Id. at pgs. 8-10.

Thus, the only evidence of the level of competition contained in the Petition supports complete preemption of ACC regulation of wholesale cellular service. Under the Supremacy Clause of the U.S. Constitution, the federal statute, 47 U.S.C. §332, overrides the Arizona state constitution and statutes.

Once the foregoing factual misstatements are cast aside, the Petition makes only two arguments to avoid preemption, both of which have no merit. First, the Petition is factually inaccurate and legally wrong in arguing that cellular service in rural areas such as Arizona 1 is not subject to effective competition because there is only one carrier for such areas. See ACC Petition at 15, 11 n.12. In Arizona 1, the market for which MCLP is licensed, there are two cellular carriers each providing both basic cellular service and roaming service. Other cellular carriers in the neighboring Las Vegas and Los Angeles MSA's also compete for customers in Arizona 1 by virtue of their de minimis extensions into the RSA's major population centers. There are also several SMR providers, which are effective competitors. MCLP competes with a total of 12 unregulated CMRS providers.

As for any need to "protect" customers in rural areas, the ACC has not taken any action with respect to cellular rates in rural areas; the ACC does not even regulate retail cellular rates. In any event, MCLP's retail rates are at competitive levels. The Petition disregards Congressional intent in enacting the new § 332(c) and the FCC's purposes in carrying it out: to foster regulatory symmetry among CMRS by eliminating barriers to

entry and thereby fostering competition. See Second Report and Order, 9 FCC Rcd at 1420. Retaining a regulatory regime for CMRS that burdens only wholesale cellular with inefficient and costly rate and entry regulation will not make the CMRS market more competitive. Rather, competitors should be allowed to compete on a level playing field; it was that goal, most recently called regulatory symmetry, that Congress and the FCC have tried to promote to reach the ultimate objective of a competitive market.

Second, the Petition also argues erroneously that existing ACC regulation of wholesale cellular must continue so that cellular carriers can be required at some unspecified future date to pay into a universal service fund. Curiously, the Petition itself admits that Congress excluded requirements for universal service payments from preemption. 47 U.S.C. § 332(c)(3)(A). The Petition fails to explain why the current system of wholesale tariffs must be continued to implement a universal service fund payment requirement for cellular carriers.

Over and above the Petition's factual misstatements and flawed arguments, the Petition also must fail because it does not even attempt to make the showings required by Congress and the FCC for petitions to avoid preemption of state CMRS regulation. Congress required that state petitions show that (1) market conditions fail to adequately protect subscribers from unjust and unreasonable rates or rates that are unjustly and unreasonably discriminatory, and (2) such market conditions exist and such service is a replacement for landline telephone service for a

substantial portion of such service in the state. 47 U.S.C. §§ 332(c)(3)(A)(i),(ii). The Petition does not address "market conditions;" the Petition fails to discuss the CMRS market and instead provides anecdotes about wholesale cellular.

Further, the Petition does not supply any evidence that wholesale cellular service in Arizona is a replacement for landline service for a substantial portion of such service in the state. To the contrary, the Petition merely alleges that cellular "is becoming a substitute for basic landline service." ACC Petition at 7. The Petition cites a statement by US WEST Communications that "there is little evidence that cellular service is actually replacing traditional wireline service" ACC Petition, Attachment 5 at pg. 13. Thus, the Petition has absolutely no support for its speculation as to cellular becoming a substitute.

There are rural customers in Arizona 1 whose homes are served with BETRS service instead of landline service, but BETRS is not CMRS. Second Report and Order, 9 FCC Rcd at 1425. There are no rural customers in Arizona 1 whose homes are served by cellular instead of the landline network. Until cellular actually becomes a substitute and replaces traditional landline service for a substantial portion of the market, the statutory standard is not met.

The Petition likewise ignores many of the showings that the FCC sought in the Second Report and Order. The ACC calls the FCC's evidentiary requirements "unattainable hurdles," thereby

admitting that the ACC cannot meet the FCC's standards to avoid preemption. See ACC Petition at 21. The ACC's admission should be enforced; it has not met the FCC's tests to avoid preemption.

II. THE COMPETITIVE CMRS MARKET FACED BY MCLP IN RURAL ARIZONA

MCLP is the wireline cellular carrier in the Arizona 1 RSA, which consists of Mohave County, Arizona. See Affidavit of David C. French, attached as Exhibit 1. MCLP offers local, long distance, and roaming service. Id. MCLP operates six cells. Id. Satellite Cellular Systems ("Satellite Cellular") is the non-wireline cellular carrier in the Arizona 1 RSA. Id. Satellite Cellular, which had a two-year head start over MCLP, also offers local, long distance, and roaming service.^{1/} Id. It operates three cells and has recently applied to the FCC for authority to operate nine additional cells. Id.

MCLP also competes directly for customers and businesses with 12 other unregulated CMRS providers in Mohave County, who provide mobile radio or paging service. Id. Each of these CMRS providers is not regulated by the ACC in any respect. Id. Collectively, these providers have service offerings for customers including (1) origination and termination of local telephone calls to members of the public within the local calling area; (2) origination and termination of long distance calls to the public; (3) receipt of roaming service when they travel

^{1/} The Petition is simply wrong in stating that one wholesale carrier in Arizona 1 only provides roaming service. Both MCLP and Satellite Cellular provide basic cellular service.

outside of their home area; (4) provision of roaming service to others when they travel within the Arizona 1 RSA; (5) receipt of bills that detail all applicable rates and charges for their service; and (6) provision of messaging service. Id.

In addition to this competition from the unregulated CMRS providers and from Satellite Cellular, MCLP competes in two of the three largest towns in Mohave County with the Block A and B cellular carriers from the adjoining Las Vegas and Los Angeles MSA's. Id. In both Bullhead City and Lake Havasu City, which lie on the Arizona side of the Colorado River that divides Arizona, California, and Nevada, MCLP competes for customers and business with the two cellular carriers operating from the Nevada side of the river and one carrier on the California side, all of which have de minimis extensions into Mohave County. See id.

Finally, as the FCC is aware, there will soon be six licenses issued to provide personal communications services ("PCS") in Mohave County. This will provide yet additional competition in the CMRS market.

The result of this competition is that MCLP's rates have been driven down to market-competitive levels. According to a recent survey of the Cellular Telecommunications Industry Association ("CTIA"), the average price nationwide for a peak minute is 39 cents; MCLP charges 33 cents. Id. The CTIA national average for off-peak is 28 cents per minute; MCLP's price is 17 cents. Id. Customers in rural Arizona are not the

victims of inflated, monopoly prices. Rather, the CMRS market in rural Arizona is competitive.

Cellular service in Mohave County is not a substitute for landline service nor a monopoly service. All inhabited areas in Mohave County have both landline service and cellular service.

Id. There is no inhabited area in the county in which cellular service is the sole telecommunications service available. Id.

III. THE ACC'S CLAIM THAT IT EXERCISES PLENARY REGULATORY JURISDICTION OVER CMRS IS FACTUALLY AND LEGALLY INCORRECT AND SUGGESTS A REGULATORY SCHEME THAT DOES NOT EXIST IN ARIZONA

The ACC Petition contains a number of misstatements of fact and law concerning the form of regulation that exists in Arizona. These inaccuracies are serious and mistakenly imply that CMRS services are subject to "detailed" regulation in Arizona.

At page 2 of the Petition, the ACC asserts:

Commercial mobile radio service providers licensed by the FCC and operating in Arizona currently function under a detailed regulatory structure that has general application for all public utilities.

At pages 1-2 of the Petition, the ACC also asserts:

. . . the ACC has already held an evidentiary proceeding in which it considered, and rejected, deregulation of commercial mobile radio services ("CMRS").

The above-quoted claims are wrong. In fact, the ACC exercises no regulatory jurisdiction of any kind over almost all of the mobile radio services defined by the FCC to constitute CMRS. See Second Report and Order, 9 FCC Rcd at 1425-1442; 47 C.F.R. § 20.9. Moreover, cellular mobile radio service -- a

segment of which is the only CMRS service that is currently regulated by the ACC -- has never been the subject of public utility-like rate and entry regulation as implied by the ACC Petition.

A. The ACC Has Deregulated Radio Paging Services

In response to a state court decision that found that radio paging service was a form of telephone service required to be regulated by the Arizona constitution, the ACC held evidentiary hearings in early 1985 in a docket entitled "In the Matter of the Application for and Order Deregulating the Paging Industry" and issued Decision No. 54488 on April 25, 1985. That Decision renounced the ACC's regulatory jurisdiction over the entirety of Arizona's radio paging industry. In the process, the ACC observed that there was vigorous competition in the industry between regulated and unregulated companies. A copy of Decision No. 54488 is attached hereto as Exhibit 3.

B. The ACC Has Deregulated Mobile Radio Service

Two years later, the ACC followed suit with an industry-wide deregulation of another major sector of CMRS, namely mobile radio service. On July 2, 1987, the ACC issued Decision No. 55633 and granted Mountain States Telephone and Telegraph Company's petition to deregulate mobile radio services in Arizona. A copy of Decision No. 55633 is attached hereto as Exhibit 4. That Decision completed the ACC's consideration of "Phase I" of the Docket No. E-1051-86-016. "Phase II" of the same docket resulted

in Decision No. 56314 issued January 12, 1989, a copy of which is attached to the ACC's Petition herein as Appendix 1.

Inexplicably, at pages 1-2 of the Petition and at page 2 n.1, the ACC failed to advise the FCC about its two previous decisions in which most of the services comprising CMRS were deregulated by ACC order on an industry-wide basis. The ACC's claim that "[c]ommercial mobile radio service providers licensed by the FCC and operating in Arizona currently function under a detailed regulatory structure that has general application for all public utilities" [Petition at p. 2] is plainly untrue.

C. The ACC's Petition Misdescribes the ACC's Cellular Regulation

The ACC also incorrectly implies that it exercises plenary regulatory jurisdiction over cellular carriers in Arizona. In fact, cellular providers in Arizona are subject to an odd form of "quasi-regulation" in which "entry" regulation reflects a substantial deference to the FCC's public need and fitness (character) determinations in the licensing process^{2/} and so-called "rate" regulation is limited to the approval of wholesale price sheets filed by the cellular providers. There is no

^{2/} Attached to the ACC's Petition as Appendix 4 are several decisions granting certificates of convenience and necessity to cellular carriers. In each Decision (and others), the ACC gave substantial deference to FCC determinations on the issues of public need and/or fitness to provide service. See Decision No. 54377 (TUCELL Partnership) findings 4 and 8; Decision No. 57226 (Arizona RSA 3 Limited Partnership), findings 11, 12 and 27; Decision No. 57073 (Smith-Bagley, Inc.) findings 4 and 5; Decision No. 57035 (Chronicle Cellular) findings 4 and 5; Decision No. 57032 (Century Yuma) findings 4 and 5.

regulation whatsoever of rates, service or business of the retail providers of cellular service in Arizona.

There is no mention in the ACC's Petition that its rate jurisdiction is limited to wholesale price sheet filings. In fact, the Petition misleads when it states at page 13: "The Commission has consistently exercised its jurisdiction with regard to the setting of reasonable rates. . . ." and at page 3 when it states that the Arizona state constitution grants it "full power" to prescribe "just and reasonable rates and charges" [Ariz. Const. art. XV § 3].

The constitutional form of rate base/rate-of-return ratemaking applied to the state's other public service corporations (e.g., electric, telephone, gas, water and wastewater companies) has never been applied to cellular operators. The state constitution requires the ACC to establish a "fair value" rate base in order to serve as the basis for establishing rates. Ariz. Const. art. XV § 14; Arizona Corporation Commission v. Arizona Public Service Co., 113 Ariz. 368, 55 P.2d 326, 328 (1976) ("Under the constitution as interpreted by this court, the Commission is required to find the fair value of the company's property and use such finding as a rate base for the purpose of determining what are just and reasonable rates." [citation omitted]). No such rate regulation is exercised by the ACC over cellular providers and the ACC provides no rate regulation at the retail level. None of these important facts is clearly set forth in the ACC's Petition

herein. See Affidavit of Lex J. Smith (Ex. 2), paragraphs 6, 7, 8 and 9; Affidavit of David C. French (Ex. 1), paragraph 12.

In the 11 years since certification of the first cellular provider in Arizona, there has been only one formal complaint filed with the ACC and that complaint died for lack of prosecution and the docket was closed. Affidavit of Lex J. Smith (Ex. 2), paragraph 10. A review of the docket sheets in the office of ACC's Docket Control reflects that none of the cellular providers certificated in Arizona has ever had a rate case presented to the ACC either to validate a fair value rate base or to justify initial or existing rates and charges or establish new ones. Such review also reflects that in no instance where the applicant had properly obtained FCC licenses and authority, was an application for a state certificate of convenience and necessity ever denied. Affidavit of Lex J. Smith (Ex. 2), paragraphs 6 and 11. In the only rate application that was ever filed with the ACC seeking to establish the reasonableness of a cellular provider's rates and charges, the Staff of the ACC filed a motion to dismiss the application. The ACC granted Staff's motion and dismissed the application finding that a rate review was not "necessary in view of the competitive nature of cellular services." Re Newvector Communications, Inc., Decision No. 55165 (August 21, 1986). A copy of Decision No. 55165 is attached hereto as Exhibit 5.

The ACC's claim that "[p]ursuant to its Constitutional mandate, the ACC has actively regulated cellular mobile service

providers" in Arizona is at best an overstatementaaa and at worst misleading.

**IV. THE ACC'S CLAIM THAT IT SHOULD BE ALLOWED TO
CONTINUE TO REGULATE "ENTRY" REGULATION IS
DEFICIENT AS A MATTER OF LAW**

The ACC seems to believe that it has some option under federal law to ask this Commission to allow it to continue to exercise "entry" regulation over CMRS providers. There is no such option. State entry regulation of CMRS providers is expressly prohibited by 47 U.S.C. § 332(c)3(A). Under that section, if a proper statutory showing is made, states may petition the FCC only "for authority to regulate the rates for any commercial mobile radio service. . . ." (Emphasis added). Since there is no legal basis for the ACC's claim to exercise "entry" regulation, that portion of the Petition should be summarily dismissed.

**V. THE ACC'S ASSERTED BASES FOR CONTINUING TO "REGULATE"
CELLULAR PROVIDERS ARE INAPPOSITE SPECULATION**

At bottom, the ACC maintains that its jurisdiction over CMRS should not be preempted because (1) the ACC needs to protect customers from "potential" "monopoly abuses," [Petition at 15] particularly in rural areas; and (2) such preemption would jeopardize Arizona's ability to insure "universal service." The first claim is speculation that is contradicted by the evidence submitted herein of the competitive CMRS market in rural Arizona. Moreover, the ACC's agreement misperceives the stated goals of Congress in removing regulatory barriers to enter and compete in

the growing CMRS marketplace. The second claim is expressly prohibited by the amendments to the Communications Act.

"Universal service" objectives may be pursued independently by the State of Arizona without any regard to whether the ACC is preempted from regulating wholesale cellular rates.

A. The Alleged Potential For "Monopoly Abuses" Is Unsupported Speculation

The ACC provides no evidence of any kind to support any of its several assertions concerning the "potential" for "monopoly abuses" as a basis to continue regulation, (see Petition at pp. 8, 15, 17, 19). This intentional omission violates the statutory and regulatory mandate to the ACC to provide actual evidence to support rate continued regulation of CMRS. See 47 U.S.C. §§ 332(c)(3)(A)(i), (ii); Second Report and Order, 9 FCC Rcd at 1501-1507. The ACC's assertions are mere speculation.

The ACC's plea to continue its so-called version of "wholesale" rate regulation should also be rejected because continuing such regulation would serve to slow down and completely frustrate the very goals that Congress sought to achieve in the amendments to the Communications Act: namely, avoidance of disparate regulatory schemes for commercial mobile radio services and removal of unnecessary regulatory burdens to further competition in the mobile services marketplace. See Second Report and Order, 9 FCC Rcd at 1418. Continuation of the ACC's jurisdiction over CMRS would mean that (1) disparate regulatory schemes will continue to create unfair competitive

disadvantages harming cellular carriers in Arizona, (see Affidavit of David C. French (Ex. 1), paragraph 9), and (2) new entrants into the marketplace will have greater reason to forego operations because of unnecessary delay and regulatory costs.^{3/} If the ACC is truly concerned (even without any data to support the claim) that Arizona RSAs are teeming with actions by "abusive monopolists," common sense and economic policy would dictate that the cure is removal of barriers to entry into the marketplace -- not continued entry regulation. However, there is simply no factual basis set forth in the Petition to support the ACC's claim and state entry regulation is barred by federal law in any event.

B. The Claim That Federal Preemption Will Jeopardize Universal Service Is Unsupported

Congress specifically provided that where CMRS is a "substitute for land line telephone exchange service for a substantial portion of the communications within . . . " the state, CMRS providers are not exempt from state "universal service"

^{3/} The administrative process involved in ACC-granted certificates of convenience and necessity is ponderous to say the least. After winning a license from the FCC in a process that can take years, the ACC process causes further delays. A review of the ACC's docket sheets for all of the certificated cellular providers in Arizona shows that even after FCC authority was in hand, the average application took 4.6 months to be processed from filing of the application to issuance of the ACC's order granting the certificate of convenience and necessity. The shortest time for such processing was 1.75 months while the longest was 9 months. Affidavit of Lex J. Smith (Ex. 2), paragraph 11. In almost all instances, applicants were forced to engage the specialized services of outside counsel to handle the filing and processing of the application and conduct of the public hearing. Id.

requirements. The statutory factual predicate for requiring CMRS providers to comply with state sanctioned "universal service" plans is that CMRS services must exist as a "substitute" for land line telephone exchange service for a "substantial portion" of communications within the state. The ACC has offered no evidence of any kind to support the existence of such predicate anywhere in Arizona. It certainly does not exist in the Arizona 1 RSA, where there is no inhabited area in which cellular service is the only service available to the public. Affidavit of David C. French (Ex. 1) at paragraph 16.

The ACC incorrectly claims that federal preemption of rate regulation will somehow hamstring the ACC's efforts to ensure "universal service." As a practical matter, neither the ACC nor the State of Arizona needs rate (or entry) regulation of CMRS providers to implement whatever state-established universal service funding mechanism may exist. CMRS providers routinely connect with land line telephone companies. If found to be in the public interest, the Arizona legislature could statutorily define "universal service" and require interconnecting CMRS providers to pay a "universal service" charge. Clearly, establishment of a state's goals toward "universal service" (however that term is defined) is not affected in any way by federal preemption and FCC forbearance of regulation of CMRS providers. The ACC's claim that federal preemption impedes its universal service goal is completely unsupported in any respect.

**VI. THE PETITION DOES NOT MAKE THE SHOWINGS
REQUIRED BY THE FCC AND CONGRESS**

The ACC's Petition is deficient in several other respects. The Petition does not address CMRS market conditions, much less show that they do not protect consumers. The Petition also does not provide any evidence to show that cellular service is a replacement for landline service for a substantial portion of the market. The Petition provides nothing more than sheer guesswork in this regard. Thus, the ACC has not passed the tests set by Congress for state petitions in 47 U.S.C. §§ 332(c)(3)(A)(i), (ii).

In addition, the ACC also has not met its burden of proof to show that its regulation of wholesale cellular rates, without regulating any other CMRS rates, should continue. Indeed, the ACC has intentionally not supplied any of the eight categories of evidence that the FCC has deemed pertinent to its examination of market conditions and consumer protection. See Second Report and Order, 9 FCC Rcd at 1504.

1. Number of CMRS Providers -- The ACC has not supplied the number of CMRS providers, the types of services offered, or the period of time of the offerings. Instead, as noted, the ACC simply lists the state's wholesale cellular carriers, as if other CMRS providers do not exist. Even in rural Arizona, there are many other CMRS providers. See Affidavit of David C. French (Ex. 1).

2. Customers -- The ACC has not supplied any information as to the number of customers, trends in each provider's customer base, annual revenues and rates of return. The ACC does not even collect such information; the ACC has not made any genuine assessment of the level of competition in the CMRS market.

3. Rate Information -- Once again, the ACC has not supplied rate information for each CMRS provider or even for each wholesale cellular carrier. The ACC has failed to make any showing that CMRS rates or wholesale cellular rates need to be regulated and, as already shown, the ACC has not adjudicated any rate cases weighing such rates.

4. Substitutable Services -- The Petition does not assess the extent to which services offered by the CMRS providers are substitutable for services offered by other carriers in the state. As already noted, the Petition discusses only one service, wholesale cellular, and it simply speculates that wholesale cellular is "becoming" a replacement for landline service in some areas. In Mohave County, there is no evidence that cellular is a substitute for landline service.

5. Opportunities for New Entrants and Barriers to Entry -- The ACC Petition completely ignores opportunities for new entrants that could offer competing services and barriers to such entry. The Petition treats wholesale cellular service in a vacuum, as if PCS and ESMR do not exist. These competing services will exist and will provide yet additional competition.

6. Specific Allegations of Fact Concerning Anti-Competitive or Discriminatory Practices -- The ACC Petition likewise does not contain specific allegations of fact supported by affidavit concerning anti-competitive or discriminatory practices. The Petition does refer to its order requiring a wireline affiliate to enter into roaming agreements with non-affiliated Block A carriers. However, the FCC is well equipped to enforce an obligation to enter into such agreements.

The ACC also refers to problems with carriers requiring resellers to purchase minimum blocks of numbers. ACC Petition at 18-19. The FCC, with its complaint process, has a long history of hearing disputes between carriers and resellers. The ACC has no unique role or special need to regulate wholesale cellular carriers in this area.

7. Evidence, Information and Analysis of Systematic Unjust and Unreasonable Rates -- Here, the FCC especially sought the demonstration of a pattern of such rates, but the ACC has not alleged or proven any pattern. The Petition does not show that subscribers are being overcharged or any way even disadvantaged. In Arizona, the CMRS marketplace, not the ACC, sets the rates at competitive levels.

8. Information Regarding Customer Satisfaction or Dissatisfaction -- The Petition does not discuss this topic, as well. As noted, the only complaint filed with the ACC against a cellular carrier was dismissed.

In sum, the ACC's Petition ignores all of the evidence that the FCC stressed that it would generally deem relevant. The Petition does not give the FCC any basis for finding that there is a valid reason for continuing the lack of regulatory symmetry in Arizona. The Petition should be rejected.


VII. CONCLUSION

For all of these reasons, Mohave Cellular Limited Partnership respectfully requests that the ACC's Petition be denied.

Respectfully submitted,

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